

Falls Church, Virginia 22041

Files: (b) (6) – Kansas City, MO
(b) (6)

Date: JAN – 9 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Jessie M. Chappell, Esquire

ON BEHALF OF DHS: Kimberly Burgess
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents, a mother and her minor son, natives and citizens of Honduras, appeal from the Immigration Judge's decision dated March 20, 2017, denying their application for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3), and protection pursuant to the Convention Against Torture. The Department of Homeland Security (DHS) has filed an opposition to the respondents' appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The lead respondent testified that she fears harm in Honduras at the hands of her boyfriend's former girlfriend, (b) (6) (Tr. at 38). The lead respondent testified that (b) (6) is jealous and angry about her relationship with her boyfriend (Tr. at 39, 50-51, 58). The lead respondent testified that on one occasion while she was pregnant with the minor respondent, Ms. (b) (6) hit her on her back with a piece of wood (Tr. at 39-43, 64-65). The lead respondent claimed that she was bruised after the attack, but did not seek medical treatment (Tr. at 41, 67, 72). The lead respondent testified that she filed a report with the police after (b) (6) hit her (Tr. at 52, 73). The lead respondent claimed that (b) (6) often appeared in her neighborhood and had told her boyfriend's mom that she wanted to kill the lead respondent (Tr. at 44-45, 59). The lead respondent did not experience any other physical altercation with (b) (6) (Tr. at 72). The lead respondent testified that she left Honduras approximately 1 year after (b) (6) hit her because she feared for her life and escalation of (b) (6)'s harassment (Tr. at 43, 58). The lead respondent claims that she fears (b) (6) may harm the minor respondent or hire an assassin to kill her (Tr. at 48-49). Also, the lead respondent testified that she fears general criminal activity in Honduras (Tr. at 60).

We affirm the Immigration Judge's determination and do not find clear error in his finding that the respondents did not establish past persecution (IJ at 10-11). The mistreatment that the lead respondent experienced in Honduras, where she was hit on the back with a stick, harassed, and threatened by her boyfriend's former girlfriend, was not sufficiently severe to amount to persecution (IJ at 10-11 7; Tr. at 39, 41, 44, 52, 55). *See Tegegn v. Holder*, 702 F.3d 1142 (8th Cir. 2013) ("persecution" for asylum purposes is an extreme concept that does not encompass low-level intimidation and harassment; absent a showing of physical harm, incidents of harassment, unfulfilled threats of injury, and economic deprivation are not persecution); *Tebysa v. Holder*, 593 F.3d 707 (8th Cir. 2010); *La v. Holder*, 701 F.3d 566 (8th Cir. 2012) (beating and jailing of alien's husband in Cambodia was not past persecution, as basis for alien's asylum, where the beating was minor and the husband was released after 3 days); *Garcia-Colindres v. Holder*, 700 F.3d 1153 (8th Cir. 2012) (harm that alien seeking asylum suffered in Guatemala did not rise to level of past persecution, even though he was subjected to brief detention, minor beatings, and threat of future violence and two of his children died, one of acid burns over his face and body and the other from at least nine gunshot wounds; harm he suffered during his 8-hour detention when he was handcuffed, beaten, and burned with cigarette was less severe than that suffered by those whose claims were routinely rejected, and the unknown circumstances surrounding deaths of his children could not conclusively establish governmental involvement or indifference).

Moreover, the Immigration Judge did not clearly err in finding that the lead respondent did not demonstrate that she had been mistreated in Honduras based on her membership in her claimed particular social group of "Honduran women who cannot leave a relationship" (IJ at 15-16).¹ Instead, the record shows that the respondent had been engaged in a personal dispute with Ms. (b) (6) (IJ at 17). (b) [REDACTED] was jealous and angry at the lead respondent because the lead respondent was in a relationship with (b) (6)' former boyfriend (IJ at 17). *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (persecutor's subjective motive is question of fact to be determined by Immigration Judge and reviewed by Board for clear error).

Further, as observed by the Immigration Judge, the lead respondent has not established that she is a member of her proposed group (IJ at 15). The lead respondent has been in a relationship with her boyfriend for a long period of time and has given birth to two of his children. She never testified that she attempted to leave her boyfriend, was abused by him, or that she was being forced to remain in her relationship with him (IJ at 15).

Also, the Board recently clarified the elements required to establish a cognizable particular social group. *See Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014); *see also Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014). An applicant for asylum or withholding of removal based on membership in a particular social group must establish that the group 1) is composed of members who share a common immutable characteristic, 2) is defined with particularity, and 3) is socially

¹ Under section 101(a)(3) of the REAL ID Act, in "mixed motive" asylum cases, an applicant must prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for the claimed persecution. *See Matter of J-B-N-& S-M-*, 24 I&N Dec. 208 (BIA 2007); *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010) (the "one central reason" standard that applies to asylum applications pursuant to section 208(b)(1)(B)(i) of the Act also applies for purposes of withholding of removal under section 241(b)(3)(A) of the Act).

distinct within the society in question. *See Matter of W-G-R*, 26 I&N Dec. at 212-18; *Matter of M-E-V-G*, 26 I&N Dec. at 237. To satisfy the particularity requirement, a group must be discrete and have definable boundaries. *See Matter of W-G-R*, 26 I&N Dec. at 214. Social distinction (formerly known as social visibility) means that the group must be perceived as a group by society, regardless of whether society can identify the members of the group by sight. *Id.* at 216-17. To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Id.* at 217 (“Although the society in question need not be able to easily identify who is a member of the group, it must be commonly recognized that the shared characteristic is one that defines the group.”). In addition to establishing the existence of a cognizable particular social group, the applicant for asylum or withholding of removal must also demonstrate a nexus between the persecution and his or her membership in the specified social group. *Id.* at 223.

The Immigration Judge was correct in finding that the lead respondent did not demonstrate membership in a cognizable particular social group (IJ at 16). The group suggested by the lead respondent lacks particularity (IJ at 16). Further, the respondents have also not shown that the proposed group meets the requirement of social distinction. The record contains evidence of ongoing and widespread violence in Honduras. However, nothing in the record shows that persons from the aforementioned group are considered or recognized by Honduran society to be a distinct social group.

Additionally, we concur with the Immigration Judge that the lead respondent did not demonstrate a well-founded fear of future persecution in Honduras. The Immigration Judge properly concluded that the lead respondent did not show that the Honduran police are unable or unwilling to protect her and the minor respondent from (b) (6) (IJ at 19). The lead respondent filed a report with the police after (b) (6) attacked her and the lead respondent testified that the police went to search for (b) (6), but could not locate her (Tr. at 73-75). Also, the lead respondent testified that she did not seek police assistance when (b) (6) began to harass and stalk her because she believes that the police in Honduras are ineffective and prone to accept bribes (Tr. at 53, 75). While the lead respondent speculated that (b) (6) may have bribed the police, there is no evidence in the record to support her speculation or to support her claim about the Honduran police’s inaction or disinterest in providing police assistance (IJ at 19). *See De Castro-Gutierrez v. Holder*, 713 F.3d 375 (8th Cir. 2013); *Gutierrez-Vidal v. Holder*, 709 F.3d 728 (8th Cir. 2013) (relevant to past persecution or a well-founded fear of future persecution, the asylum applicant must show that the assaults were either condoned by the government or were committed by private actors that the government was unwilling or unable to control; *Salman v. Holder*, 687 F.3d 991 (8th Cir. 2012)). The Immigration Judge also properly determined that the lead respondent did not establish that she cannot relocate within Honduras or that it would be unreasonable for her to do so (IJ at 12-13; Tr. at 76). The lead respondent never attempted to relocate within Honduras (Tr. at 76), and there is no evidence in the record that any person currently seeks to harm the respondents. The lead respondent’s fear of violence and general criminal activity in Honduras is not sufficient to meet her burden of proof for asylum. *See Feleke v. INS*, 118 F.3d 594, 598 (8th Cir. 1997) (holding political unrest and ethnic conflict do not compel a finding of persecution); *Ngure v. Ashcroft*, 367 F.3d 975, 990 (8th Cir. 2004) (noting isolated violence does not compel a finding of persecution). Therefore, based on the facts found by the Immigration Judge, with which we discern no clear error, and following our de novo review of

other matters, we concur with the Immigration Judge that the lead respondent did not establish eligibility for asylum.

Inasmuch as the lead respondent did not establish eligibility for asylum, it follows that she cannot establish eligibility for withholding of removal, which has a higher burden of proof. *See generally INS v. Stevic*, 467 U.S. 407 (1984). Moreover, the Immigration Judge denied the respondents' application for protection pursuant to the torture convention. The respondents have never been tortured in Honduras. Further, the evidence in the record does not show that they will likely be tortured with the consent or acquiescence (to include the concept of willful blindness) of a public official or other person acting in an official capacity in Honduras. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1); *Matter of M-B-A-*, 23 I&N Dec. 474 (BIA 2002); *Matter of Y-L-, A-G- & R-S-R-*, 23 I&N Dec. 270, 279-85 (A.G. 2002). On the whole, the record supports the Immigration Judge's resolution in this matter.

According, the following order will be entered.

ORDER: The respondents' appeal is dismissed.



Ray Paul
FOR THE BOARD